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Attorneys for Defendant

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DR. MAC TRUONG, :  
 :  
 Plaintiff, : 07 Civ. 8085 (SHS)  
 :  
 -against- :  
 :  
 CHARLES SCHWAB & CO., INC., :  
 :  
 Defendant. :  
-----X

**DECLARATION OF DANIEL J. BROOKS IN SUPPORT OF  
DEFENDANT'S MOTION TO DISMISS THE COMPLAINT**

DANIEL J. BROOKS, under the penalty of perjury, states as follows:

1. I am a member of the Bar of this Court and of Schnader Harrison Segal & Lewis LLP, attorneys for the defendant in the above-captioned action. I submit this declaration, based upon personal knowledge, in support of defendant's motion to dismiss the complaint, without leave to replead, pursuant to Rule 12(b)(6), Fed. R. Civ. P.

2. The purpose of this declaration is to identify and attach documentary evidence establishing adjudicative facts, capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, of which the Court may take judicial notice in deciding defendant's motion to dismiss.

3. Attached hereto as Exhibit A is a copy of the complaint in this action, filed in the New York State Supreme Court, County of New York, on or about September 6, 2007 and removed to this Court on September 14, 2007.

4. Attached hereto as Exhibit B is a copy of a stipulation and order, “so ordered” on June 14, 1999, in an action entitled *Mac Truong v. Charles Schwab*, No. 604650/97 (N.Y. Sup. Ct.) (the “New York Action”).

5. Attached hereto as Exhibit C is a copy of a decision and order, dated April 3, 2000, granting summary judgment in the New York Action.

6. Attached hereto as Exhibit D is a copy of objections to plaintiff Mac Truong’s long accounting, dated July 19, 2000, filed in the New York Action.

7. Attached hereto as Exhibit E is a copy of a transcript of a hearing, held on September 25, 2002 and “so ordered” on September 26, 2002, in the New York Action.

8. Attached hereto as Exhibit F is a copy of a pre-argument statement, dated May 3, 2000, filed by plaintiff in the New York Action in connection with his appeal from the April 3, 2000 decision and order (Ex. C hereto).

9. Attached hereto as Exhibit G is a copy of a transcript of a proceeding, held on April 29, 2002, in the New York Action. On pages 3-4 and 13 of that transcript, Mac Truong was held in contempt of court for causing the transfer of assets from a custodial account for his son, Hugh Mac Truong, maintained with Charles Schwab & Co., Inc. (“Schwab”), to another financial institution.

10. Attached hereto as Exhibit H is a copy of an order to show cause, dated March 4, 2003, for an order holding Mac Truong in contempt of court for causing the transfers of assets from three accounts maintained at Schwab to another financial institution.

11. Attached hereto as Exhibit I is a copy of a transcript of a hearing, held on March 13, 2003 in the New York Action, in which, at page 5, Mac Truong was held in contempt of court for causing the transfers of assets from the three accounts referred to in Ex. H hereto.

12. Attached hereto as Exhibit J are copies of a notice of cross-motion to amend the complaint in an action that was pending in this Court, entitled *Truong v. Charles Schwab & Co.*, No. 03 Civ. 3425 (PKC), dated September 30, 2006, excerpts from Mac Truong's affirmation in support of the cross-motion, and a proposed amended complaint.

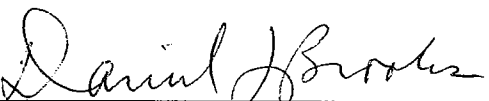
13. Attached hereto as Exhibit K is a copy of a transcript of a hearing, held on August 16, 2007 in the New York Action, in which the court denied Mac Truong's motion to reopen the New York Action or for clarification of the September 26, 2002 order entered in the New York Action.

14. Attached hereto as Exhibit L is a copy of a memorandum and order, dated September 27, 2007, in which the Court denied a motion for "reconsideration," pursuant to Rule 60(b)(2), Fed. R. Civ. P., of a judgment entered in three actions pending in this Court, entitled *Truong v. Tran*, Nos. 03 Civ. 3423, 3424, 3425 (PKC).

WHEREFORE, it is respectfully requested that the complaint be dismissed and that the defendant be awarded such other and further relief as the Court deems just and proper.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 17, 2007, at New York, New York.

  
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Daniel J. Brooks (DB-3136)